

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 763

Introduced by Assembly Member Bill Berryhill

February 17, 2011

~~An act to amend Section 120 of the Water Code, relating to water.~~
An act to amend Sections 1602 and 1603 of, and to add Section 1611.5 to, the Fish and Game Code, and to amend Section 183 of, to add Section 183.1 to, and to add Chapter 13 (commencing with Section 1890) and Chapter 14 (commencing with Section 1900) to Part 2 of Division 2 of, the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 763, as amended, Bill Berryhill. ~~Department of Water Resources.~~
Water rights: administrative procedures: lake and streambed alteration agreements.

(1) Existing law authorizes the State Water Resources Control Board to hold any hearings and conduct any investigations in any part of the state necessary to carry out its powers. Existing law authorizes a hearing or investigation to be conducted by any member of the board upon authorization of the board, with a specified exception.

This bill would additionally authorize the board to employ administrative law judges meeting specified qualifications and to authorize an administrative law judge to conduct hearings and issue decisions and orders relating to the administration of water rights, as specified. The bill would authorize any hearing or investigation of the board to be conducted by an administrative law judge, with a specified exception.

(2) *Under existing law, the board administers a water rights program pursuant to which the board grants permits and licenses to appropriate water, upon an application to appropriate water.*

Existing law authorizes an applicant, permittee, or licensee for a right to appropriate water to change the point of diversion, place of use, or purpose of use of the water from that specified in the application, permit, or license, upon filing a petition with the board and approval of the petition by the board.

Existing law establishes various procedures for the submission, processing, and approval of an application to appropriate water and a petition to change the point of diversion, place of use, or purpose of use of the water in an application, permit, or license.

This bill would establish an alternative set of procedures for submission, processing, and approval of applications to appropriate water and petitions to change the point of diversion, place of use, or purpose of use of water, and would authorize an applicant or petitioner to make an election to use the alternative procedures in lieu of the procedures established under existing law. The bill would provide that an approval of a permit or petition pursuant to the alternative procedures is in lieu of any other permit, certificate, or other document required by another agency, as specified. Among other procedures, the bill would require the board to transmit copies of applications or petitions to specified local governmental agencies, and upon receipt of an application or petition, would require a local agency to submit comments to the board. By imposing these new requirements on local governmental agencies, this bill would create a state-mandated local program.

The bill would also authorize a person who files an application to appropriate water, a protest to an application to appropriate water, a petition to change the point of diversion, place of use, or purpose of use of the water in an application, permit, or license, or a protest to a petition, to appeal specified determinations for review by a member of the board or an administrative law judge before the board takes final action on the application or petition.

(3) *Existing law prohibits a person, a state or local governmental agency, or a public utility, from substantially diverting or obstructing the natural flow of, or substantially changing or using any material from the bed, channel, or bank of, any river, stream, or lake, or depositing or disposing of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river,*

stream, or lake, unless prescribed requirements are met, including written notification to the Department of Fish and Game regarding the activity. Existing law requires the department to determine whether the activity may substantially adversely affect an existing fish and wildlife resource and, if so, to provide a draft lake or streambed alteration agreement to the person, agency, or utility. Existing law prescribes various requirements for lake and streambed alteration agreements. Existing law also establishes various exemptions, including exemptions for certain agreements relating to water supply, drainage, flood control, or waste treatment and disposal facilities attained prior to January 1, 1977, after the initial notification and agreement.

This bill would modify that prohibition to prohibit only a substantial obstruction that will substantially affect a river, stream, or lake as described above, unless prescribed requirements are met.

The bill would delete that exemption for pre-1977 agreements, and would exempt from the notice and agreement requirements, after the initial notification and agreement, an activity at a facility in existence on January 1, 2012, unless the work or the preexisting facility has substantially changed or conditions affecting fish and wildlife resources have substantially changed, and those resources may be adversely affected by the activity conducted under the agreement or at the preexisting facility.

The bill would require that an entity that submits a specified application or petition for appropriation of water to the State Water Resources Control Board be deemed to provide the notification required under the lake or streambed alteration provisions, if the application or petition meets prescribed requirements. The bill would require the department to consult with the board and provide recommendations as to measures necessary to protect existing fish and wildlife resources in connection with water right applications and petitions, and would prohibit the department from imposing measures in a lake or streambed alteration agreement that are inconsistent with specified requirements imposed by the board.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law establishes in the Natural Resources Agency the Department of Water Resources, which is under the control of the Director of Water Resources. Existing law provides for the appointment of the director by the Governor, subject to confirmation by the Senate.~~

~~This bill would delete an obsolete reference from, and make technical, nonsubstantive changes to, the provisions establishing the department and providing for the appointment of the director.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 1602 of the Fish and Game Code is*
2 *amended to read:*

3 1602. (a) An entity ~~may~~ *shall* not substantially ~~divert or~~
4 obstruct the natural flow of, or substantially change or use any
5 material from the bed, channel, or bank of, any river, stream, or
6 lake, or deposit or dispose of debris, waste, or other material
7 containing crumbled, flaked, or ground pavement where it may
8 pass into any river, stream, or lake, unless all of the following
9 occur:

10 (1) The department receives written notification regarding the
11 activity in the manner prescribed by the department. The
12 notification shall include, but is not limited to, all of the following:

13 (A) A detailed description of the project's location and a map.

14 (B) The name, if any, of the river, stream, or lake affected.

15 (C) A detailed project description, including, but not limited to,
16 construction plans and drawings, if applicable.

17 (D) A copy of any document prepared pursuant to Division 13
18 (commencing with Section 21000) of the Public Resources Code.

19 (E) A copy of any other applicable local, state, or federal permit
20 or agreement already issued.

21 (F) Any other information required by the department.

22 (2) The department determines the notification is complete in
23 accordance with Chapter 4.5 (commencing with Section 65920)
24 of Division 1 of Title 7 of the Government Code, irrespective of
25 whether the activity constitutes a development project for the
26 purposes of that chapter.

1 (3) The entity pays the applicable fees, pursuant to Section 1609.

2 (4) One of the following occurs:

3 ~~(A)~~

4 ~~(i)~~

5 (A) (i) The department informs the entity, in writing, that the
6 activity will not substantially adversely affect an existing fish or
7 wildlife resource, and that the entity may commence the activity
8 without an agreement, if the entity conducts the activity as
9 described in the notification, including any measures in the
10 notification that are intended to protect fish and wildlife resources.

11 (ii) Each region of the department shall log the notifications of
12 activities where no agreement is required. The log shall list the
13 date the notification was received by the department, a brief
14 description of the proposed activity, and the location of the activity.
15 Each item shall remain on the log for one year. Upon written
16 request by any person, a regional office shall send the log to that
17 person monthly for one year. A request made pursuant to this
18 clause may be renewed annually.

19 (B) The department determines that the activity may
20 substantially adversely affect an existing fish or wildlife resource
21 and issues a final agreement to the entity that includes reasonable
22 measures necessary to protect the resource, and the entity conducts
23 the activity in accordance with the agreement.

24 (C) A panel of arbitrators issues a final agreement to the entity
25 in accordance with subdivision (b) of Section 1603, and the entity
26 conducts the activity in accordance with the agreement.

27 (D) The department does not issue a draft agreement to the
28 entity within 60 days from the date notification is complete, and
29 the entity conducts the activity as described in the notification,
30 including any measures in the notification that are intended to
31 protect fish and wildlife resources.

32 (b) (1) If an activity involves the routine maintenance and
33 operation of water supply, drainage, flood control, or waste
34 treatment and disposal facilities, *or is an activity at a preexisting*
35 *facility that is in existence on January 1, 2012*, notice to and
36 agreement with the department shall not be required after the initial
37 notification and agreement, unless the department determines either
38 of the following:

39 (A) The work described in the agreement *or the activity of the*
40 *preexisting facility* has substantially changed.

(B) Conditions affecting fish and wildlife resources have substantially changed, and those resources ~~are~~ *may be* adversely affected by the activity conducted under the agreement *or at the preexisting facility*.

(2) This subdivision applies only if *the facilities described in paragraph (1) were in existence before January 1, 2012, or notice to, and agreement with, the department was attained prior to January 1, 1977, January 1, 2012, and the department has been provided a copy of the agreement or other proof of the existence of the agreement that satisfies the department, if requested.*

(c) It is unlawful for any person to violate this chapter.

SEC. 2. *Section 1603 of the Fish and Game Code is amended to read:*

1603. (a) After the notification is complete, the department shall determine whether the activity, *as compared to the baseline environmental conditions present at the time of the notification*, may substantially adversely affect an existing fish and wildlife resource. If the department determines that the activity may have that effect, the department shall provide a draft agreement to the entity within 60 days after the notification is complete. The draft agreement shall describe the fish and wildlife resources that the department has determined the activity may substantially adversely affect and include measures to protect those resources. The department's description of the affected resources *in the draft agreement shall be specific and detailed and shall demonstrate a connection between the measures to protect those resources and the substantial adverse effect*, and the department shall make available, upon request, the information upon which its determination of substantial adverse effect is based. Within 30 days of the date of receipt of the draft agreement, the entity shall notify the department whether the measures to protect fish and wildlife resources in that draft agreement are acceptable. If the department's measures are not acceptable, the entity shall so notify the department in writing and specify the measures that are not acceptable. Upon written request, the department shall meet with the entity within 14 days of the date the department receives the request for the purpose of resolving any disagreement regarding those measures. If the entity fails to respond, in writing, within 90 days of receiving the draft agreement, the department may

1 withdraw that agreement, and require the entity to resubmit a
2 notification to the department before commencing the activity.

3 (b) If mutual agreement is not reached at any meeting held
4 pursuant to subdivision (a), the entity may request, in writing, the
5 appointment of a panel of arbitrators to resolve the disagreement.
6 A panel of arbitrators shall be appointed within 14 days of receipt
7 of the written request. The panel of arbitrators shall be comprised
8 of three persons, as follows: one representative selected by the
9 department; one representative selected by the affected entity; and
10 a third person mutually agreed upon by the department and the
11 entity, who shall serve as the panel chair. If the department and
12 the entity cannot agree on the third person within that 14-day
13 period, the third person shall be appointed in the manner provided
14 by Section 1281.6 of the Code of Civil Procedure. The third person
15 shall have scientific expertise relevant to the fish and wildlife
16 resources that may be substantially adversely affected by the
17 activity proposed by the entity and to the measures proposed by
18 the department to protect those resources. The authority of the
19 panel of arbitrators is limited to resolving disagreements regarding
20 the measures specified in subdivision (a), and subdivisions (b) and
21 (g) of Section 1605, and, in the case of an extension, whether or
22 not the agreement needs to be modified to protect fish and wildlife
23 resources. Any decision by the panel of arbitrators shall be issued
24 within 14 days from the date the panel was established, shall be
25 binding on the department and the affected entity, shall be based
26 on the best scientific information reasonably available at the time
27 of the arbitration, and, except for a decision to extend an agreement
28 without modification, shall be made in the form of a final
29 agreement. The final agreement issued by the panel shall also
30 include, without modification, all measures that were not subject
31 to arbitration. Each party shall pay the expenses of their selected
32 representative and pay one-half the expenses of the third person.

33 *SEC. 3. Section 1611.5 is added to the Fish and Game Code,*
34 *to read:*

35 *1611.5. (a) An entity that submits a water right application*
36 *or petition in accordance with Part 2 (commencing with Section*
37 *1200) of Division 2 of the Water Code, or submits a copy directly*
38 *to the department, is deemed to have given the notification required*
39 *by paragraph (1) of subdivision (a) of Section 1602 as of the date*
40 *that the application or petition is provided to the department.*

1 (b) Subdivision (a) shall apply only if all of the following
2 information is included in the application or petition:

3 (1) The volume, type, and equipment to be used in removing or
4 displacing any combination of soil, sand, gravel, or boulders.

5 (2) The volume of water, intended use, and equipment to be
6 used in any water diversion or impoundment, if applicable.

7 (3) The type and density of vegetation to be affected and an
8 estimate of the area involved.

9 (4) A diagram or sketch of the location of the operation that
10 clearly indicates the stream or other water and access from a
11 named public road. Locked gates shall be indicated and the
12 compass direction shall be shown.

13 (5) A description of the period of time in which operations will
14 be carried out.

15 (c) The department is not required to determine whether a
16 notification pursuant to subdivision (a) is complete, or otherwise
17 process the notification, until both the application or permit and
18 the applicable notification fee have been received by the
19 department.

20 (d) (1) The department shall consult with the State Water
21 Resources Control Board and provide recommendations as to
22 measures necessary to protect existing fish and wildlife resources,
23 as required pursuant to Part 2 (commencing with Section 1200)
24 of Division 2 of the Water Code.

25 (2) The department shall not impose measures in an agreement
26 issued pursuant to this chapter that are inconsistent with conditions
27 pertaining to water diversion and use imposed pursuant to a permit
28 or other determination issued by the State Water Resources Control
29 Board pursuant to Part 2 (commencing with Section 1200) of
30 Division 2 of the Water Code.

31 (e) Nothing in this section shall require the department to issue
32 an agreement within fewer than 60 days after the date on which
33 the notification is complete.

34 SEC. 4. Section 183 of the Water Code is amended to read:

35 183. (a) The board may hold any hearings and conduct any
36 investigations in any part of the state necessary to carry out the
37 powers vested in it, and for such purposes has the powers conferred
38 upon heads of departments of the state by Article 2 (commencing
39 with Section 11180); of Chapter 2; of Part 1; of Division 3; of Title
40 2 of the Government Code.

1 ~~Any~~

2 (b) Any hearing or investigation by the board may be conducted
3 by any member of the board, or by an administrative law judge
4 pursuant to Section 183.1, upon authorization of the board, and
5 ~~he the member or the administrative law judge~~ shall have the
6 powers granted to the board by this section, ~~but any~~. However, any
7 final action of the board shall be taken by a majority of all the
8 members of the board, at a meeting duly called and held, *except*
9 *for any purpose for which this code authorizes a final action by a*
10 *member or an administrative law judge.*

11 ~~At~~

12 (c) All hearings held by the board or by any member ~~thereof~~ of
13 the board shall be open and public.

14 SEC. 5. Section 183.1 is added to the Water Code, to read:

15 183.1. (a) The board may employ, on a temporary basis,
16 administrative law judges with expertise in water rights law, water
17 quality law, and the California Administrative Procedure Act
18 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
19 Division 3 of Title 2 of the Government Code), for purposes of this
20 section.

21 (b) Notwithstanding any other law, the board may authorize an
22 administrative law judge to do any of the following:

23 (1) Conduct a hearing, and issue a decision or order, pursuant
24 to Part 2 (commencing with Section 1200) of Division 2.

25 (2) Reconsider and amend a decision or order pursuant to
26 Chapter 4 (commencing with Section 1120) of Part 1 of Division
27 2.

28 (3) Conduct a hearing on, and adopt an order setting,
29 administrative civil liability, or determining that a liability shall
30 not be imposed, pursuant to Section 1055.

31 (4) Review appeals of determinations by the staff of the board
32 regarding an application, petition, or other water right matter that
33 is delegated to board staff before the board has taken final action.

34 (c) The board shall adopt reasonable regulations establishing
35 procedures and requirements for the reimbursement of the board's
36 costs associated with the employment of an administrative law
37 judge for the purposes of this section from parties to an
38 adjudication or hearing conducted by an administrative law judge.

39 SEC. 6. Chapter 13 (commencing with Section 1890) is added
40 to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 13. PREDECISIONAL REVIEW

1890. Any person who files an application to appropriate water or a protest to an application to appropriate water pursuant to Chapter 2 (commencing with Section 1250), or a petition or protest pursuant to Chapter 10 (commencing with Section 1700) or Chapter 10.5 (commencing with Section 1725), may seek review by a member of the board or an administrative law judge before the board takes final action on the application, petition, or protest, with respect to any of the following determinations:

(a) Whether the diversion is from a body of water subject to the jurisdiction of the board pursuant to Section 1200.

(b) Whether the use of the water involves diversion of water subject to the jurisdiction of the board.

(c) Whether unappropriated water is available for a proposed diversion pursuant to Section 1202.

(d) Whether the application or petition is subject to the California Environmental Quality Act (Division 13 (commencing with section 21000) of the Public Resources Code), or is subject to that act but categorically exempt from further analysis.

(e) Whether a document satisfies the requirements of the California Environmental Quality Act.

(f) Whether a protest shall be accepted, rejected, or dismissed.

SEC. 7. Chapter 14 (commencing with Section 1900) is added to Part 2 of Division 2 of the Water Code, to read:

CHAPTER 14. ALTERNATIVE PROCEDURES FOR APPROPRIATION OF WATER

1900. This chapter establishes alternative procedures for the processing and approval of applications to appropriate water pursuant to Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1300), Chapter 4 (commencing with Section 1330), Chapter 5 (commencing with Section 1340), and Chapter 6 (commencing with Section 1375) and petitions pursuant to Chapter 10 (commencing with Section 1700) and Chapter 10.5 (commencing with Section 1725).

1901. (a) This chapter shall apply only if an applicant or petitioner elects to use the alternative procedures set forth in this chapter for a purpose described in Section 1900.

1 ***(b) The applicant or petitioner may make the election to use the***
2 ***procedures set forth in this chapter at either of the following times:***

3 ***(1) At any time before a public notice of the application or***
4 ***petition has been issued.***

5 ***(2) After a public notice of the application or petition has been***
6 ***issued, but before any document prepared under the California***
7 ***Environmental Quality Act (Division 13 (commencing with Section***
8 ***21000) of the Public Resources Code) is provided for public***
9 ***review.***

10 ***(c) If the election is made pursuant to paragraph (2) of***
11 ***subdivision (b), the board shall issue a new notice of the***
12 ***application or petition in accordance with subdivision (b) of***
13 ***Section 1904. The notice of the application or petition shall state***
14 ***that this chapter applies to the processing and approval of that***
15 ***application or petition.***

16 ***1902. (a) In accordance with this chapter, the board shall***
17 ***have the exclusive power to approve applications to appropriate***
18 ***water pursuant to Chapter 2 (commencing with Section 1250),***
19 ***Chapter 3 (commencing with Section 1300), Chapter 4***
20 ***(commencing with Section 1330), Chapter 5 (commencing with***
21 ***Section 1340), and Chapter 6 (commencing with Section 1375)***
22 ***and petitions pursuant to Chapter 10 (commencing with Section***
23 ***1700) and Chapter 10.5 (commencing with Section 1725).***

24 ***(b) An approval of a permit to appropriate water or a petition***
25 ***to change the point of diversion, place of use, or purpose of use***
26 ***as specified in an application, permit, or license, pursuant to this***
27 ***chapter, shall be in lieu of any other permit, certificate, or other***
28 ***document required by any state, local, or regional agency, or a***
29 ***federal agency to the extent permitted by federal law, for the use***
30 ***of the appropriated water.***

31 ***(c) (1) An approval pursuant to this chapter shall supersede***
32 ***any approval required pursuant to any other statute, ordinance,***
33 ***or regulation of any state, local, regional agency, or federal agency***
34 ***to the extent permitted by federal law.***

35 ***(2) Nothing in this chapter shall supersede any applicable***
36 ***requirements under the California Environmental Quality Act***
37 ***(Division 13 (commencing with Section 21000) of the Public***
38 ***Resources Code).***

39 ***1903. (a) The board shall be the lead agency pursuant to***
40 ***Section 21165 of the Public Resources Code for purposes of any***

1 application or petition that is subject to this chapter and the
2 California Environmental Quality Act (Division 13 (commencing
3 with Section 21000) of the Public Resources Code).

4 (b) If an environmental impact report or negative declaration
5 is required for purposes of the application or petition, the report
6 or declaration shall be completed within one year after receipt of
7 the application or petition.

8 1904. (a) (1) Within 30 days after it receives an application
9 or petition, the board shall determine whether the application or
10 petition is complete.

11 (2) If the board determines that the application or petition is
12 incomplete, the board shall provide a written notice to the
13 applicant or petitioner specifying the parts of the application or
14 petition that are incomplete and indicating the manner in which
15 it can be made complete.

16 (3) Within 30 days after the receipt of information needed to
17 complete an application or petition, as identified pursuant to
18 paragraph (2), the board shall determine whether the information
19 is sufficient to make the application complete.

20 (b) Upon a determination that an application or petition is
21 complete, the board shall cause a notice to be published in
22 accordance with Chapter 3 (commencing with Section 1300),
23 Chapter 10 (commencing with Section 1700), or Chapter 10.5
24 (commencing with Section 1725), whichever is applicable to the
25 application or petition. The notice shall state that the application
26 or petition is subject to the provisions of this chapter. In addition
27 to any notice requirements pursuant to any other law, the board
28 shall also provide copies of the application or petition in the
29 manner described in subdivision (c).

30 (c) (1) (A) The board shall transmit a copy of the application
31 or petition to all local governmental agencies having jurisdiction
32 over land use, or related jurisdiction, in the area of the proposed
33 point of diversion or place of use.

34 (B) Upon receipt of an application or petition pursuant to this
35 paragraph, a local agency shall review the application and submit
36 to the board comments on, among other things, the application or
37 petition.

38 (2) The board shall transmit a copy of the application to each
39 federal and state agency having jurisdiction or special interest in
40 matters pertinent to the application or petition.

1 (3) *The board shall transmit a copy of the application or petition*
2 *to any governmental agency not specified in paragraph (1) or (2),*
3 *but which the board finds has any information or interest in the*
4 *application or petition, and shall invite the comments and*
5 *recommendations of each agency. Agency comments shall include*
6 *reference to any relevant laws, ordinances, or regulations that an*
7 *agency has promulgated or administered.*

8 (d) *For purposes of this section, “complete” means that the*
9 *application or petition contains all information and contents*
10 *required pursuant to Article 2 (commencing with Section 1260)*
11 *of Chapter 2, Chapter 10 (commencing with Section 1700), or*
12 *Chapter 10.5 (commencing with Section 1725), whichever is*
13 *applicable.*

14 1905. *Local and state agencies having jurisdiction or special*
15 *interest in matters pertinent to the application or petition shall*
16 *provide their comments and recommendations on the application*
17 *or petition within 180 days of the date of notice of the application*
18 *or petition.*

19 1907. (a) *No earlier than 90 days, and not later than 240 days,*
20 *after the date of the notice of the application or petition pursuant*
21 *to subdivision (b) of Section 1904, the board shall commence a*
22 *public hearing or hearings on the application or petition, as*
23 *required pursuant to Article 2 (commencing with Section 1350)*
24 *of Chapter 5, Chapter 10 (commencing with Section 1700), or*
25 *Chapter 10.5 (commencing with Section 1725).*

26 (b) *The board shall cause a notice of the hearing to be published*
27 *in compliance with Article 1 (commencing with Section 1340) of*
28 *Chapter 5, Chapter 10 (commencing with Section 1700), or*
29 *Chapter 10.5 (commencing with Section 1725), whichever is*
30 *applicable to the application or petition.*

31 (c) *The hearing shall provide a reasonable opportunity for the*
32 *public and all parties to the proceeding to comment upon the*
33 *application or petition, and shall provide an equivalent opportunity*
34 *for comment as required pursuant to Division 13 (commencing*
35 *with Section 21000) of the Public Resources Code.*

36 (d) *Consistent with the requirements of this section, the board*
37 *shall have the discretion to determine whether or not a hearing is*
38 *to be conducted in a manner that requires formal examination of*
39 *witnesses or that uses other similar adjudicatory procedures.*

1 1908. (a) Within 18 months after the date of the notice of an
2 application or petition that does not require a public hearing
3 pursuant to subdivision (b) of Section 1904, or within three months
4 of a public hearing on an application or petition pursuant to
5 Section 1907, or at any later time as is mutually agreed by the
6 board and the applicant or petitioner, the board shall issue a
7 written decision or order on the application or petition.

8 (b) The written decision shall comply with the requirements of
9 this part, and shall include findings with regard to whether the
10 proposed application or petition complies with standards adopted
11 by the board and with any applicable local, regional, state, and
12 federal laws or regulations.

13 (c) If the board finds that the application or petition does not
14 comply with a state, local, or regional law or regulation, the board
15 shall consult and meet with the appropriate state, local, or regional
16 governmental agency to attempt to correct or eliminate that
17 noncompliance. If noncompliance cannot be corrected or
18 eliminated, the board shall inform the state, local, or regional
19 governmental agency of its findings pursuant to Section 1909.

20 1909. (a) The board shall not approve an application or
21 petition if it finds, pursuant to subdivision (c) of Section 1908, that
22 the application or petition does not comply with any applicable
23 state, local, or regional law or regulation, unless the board
24 determines that the application or petition is required for the public
25 interest and that there are not more prudent and feasible means
26 of achieving the public interest. In making that determination, the
27 board shall consider the entire record of the proceeding, including,
28 but not limited to, the impacts of the application or petition on the
29 environment, water user benefits, and water supply reliability. The
30 basis for the determination shall be set forth in writing and
31 submitted as part of the record pursuant to Section 1908.

32 (b) For purposes of this section, the board shall not make any
33 finding or determination that is in conflict with any applicable
34 federal law or regulation.

35 SEC. 8. If the Commission on State Mandates determines that
36 this act contains costs mandated by the state, reimbursement to
37 local agencies and school districts for those costs shall be made
38 pursuant to Part 7 (commencing with Section 17500) of Division
39 4 of Title 2 of the Government Code.

1 SECTION 1. ~~Section 120 of the Water Code is amended to~~
2 ~~read:~~

3 ~~120. (a) There is in the Natural Resources Agency the~~
4 ~~Department of Water Resources, which is under the control of an~~
5 ~~executive officer known as the Director of Water Resources.~~

6 ~~(b) The director shall be appointed by the Governor and shall~~
7 ~~hold office at the pleasure of the Governor. The appointment of~~
8 ~~the director is subject to confirmation by the Senate at the next~~
9 ~~regular or special session of the Legislature, and the refusal or~~
10 ~~failure of the Senate to confirm the appointment shall create a~~
11 ~~vacancy in the office.~~

12 ~~(c) The director shall receive an annual salary as provided for~~
13 ~~by Chapter 6 (commencing with Section 11550) of Part 1 of~~
14 ~~Division 3 of Title 2 of the Government Code.~~